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SMITH GAMBRELL & RUSSELL
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OFFICE OF PETITIONS

In re Application of :
Denis Bertin :
Application No. 09/215,367 : **ON PETITION**
Filed: December 18, 1998 :
Attorney Docket No. 033808 F 193 :

This is a decision on the petition under 37 CFR 1.137(b), filed September 7, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." No additional fee is required with any renewed petition. Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed April 10, 2000, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 11, 2000.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (3) above.

In the instant case, petitioner, no later than January 17, 2001 was aware (or should have been aware) that a petition to revive was necessary. Therefore, in addition to a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a

grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must provide a showing as to: (1) the date that petitioner first became aware of the abandonment of the application; (2) how any delay between the mailing of the Notice of Abandonment and petitioner's discovery of the abandoned status of the application occurred; and (3) the cause of any delay between petitioner's discovery of the abandoned status of the application and the filing of a petition to revive. *See* 37 CFR 1.137(b)(3).

Further correspondence with respect to this matter should be addressed as follows:

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By fax: (703) 872-9306
 ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.¹



Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ Effective September 27, 2004, the phone number will be 571-272-3220.